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## In the Eye of the Storm

*Michael Burt '78 and the Menendez case*



*Michael Burt, left, with Lyle Menendez as a judge declared a mistrial.*

**T**he waiting, says Michael Burt, was the hardest part.

For 25 days he and his client, Lyle Menendez, sweated it out while the jurors deliberated. Finally the jury declared itself hung and the judge declared a mistrial. In this hugely publicized California murder trial, it was in no small measure a victory for the defense.

Burt, a 1978 graduate of the University at Buffalo Law School, was one of two lawyers representing Lyle Menendez, who with his younger brother, Erik, faced first-degree murder charges for killing their parents in their Beverly Hills mansion. Prosecutors painted the brothers as greedy to inherit the family's fortune, said to be \$14 million. The defense argued that the shotgun slayings were committed in self-defense after years of physical and psychological abuse.

"For 25 days we paced, worried, fretted. We set a record in California for the longest period of jury deliberations," says Burt, who took a leave of absence from his job as a deputy public defender in San Francisco to work on the Menendez case. "I can't put into words how painful the process is, because you're waiting for essentially a life-or-death decision, or a decision whether to go into the next, penalty phase of the trial."

California has the death penalty, and if convicted, Lyle and Erik Menendez faced the prospect of the gas chamber.

In fact, it was Burt's work in capital cases that drew the attention of Leslie Abramson and Jill Lansing, private-practice attorneys for the two brothers. In death penalty cases, California law stipulates that each defendant is entitled to two lawyers. Burt worked with Lansing to defend Lyle Menendez, in a joint trial heard by two separate juries.

"I was always a fairly strong death penalty opponent," Burt says. "That, I think, stems from a gut feeling that it was wrong, and the more I learned about it, the more wrong I thought it was. I have some religious scruples about it, but I also think it's just bad public policy." He credits "some exceptionally well-qualified and inspirational teachers in that area at the Law School."

"I think one of the strengths I

but a reasonable person in the same situation would not think the threat would be imminent. Given the history of abuse these guys suffered, their own subjective state of mind was that their parents were threatening them.

"I thought, of the two cases, we had the harder of the two," Burt says. "Our client was portrayed as the older, more sophisticated, leader-of-the-pack kind of guy. ... The prosecution started this case with the perception it was a slam-dunk, open-and-shut case, and the death penalty would result from this. But by the end of the case we had not only the jury but probably a large segment of the California population, as well as people across the country, debating the issue of whether these guys were even guilty of manslaughter and whether they shouldn't be cut loose entirely."

The trial of Lyle and Erik Menendez was televised daily on the cable network Court TV, and Burt says

the people who are covering the courts there are much more focused on the entertainment value of the case."

Burt said the intense coverage of the Menendez trial flushed out witnesses on both sides — witnesses who otherwise might never have come forward. "We were getting people calling in who had known these guys since they were kids and had some interesting stories about the parents, for example, stories that presented the parents in a bad light."

After the mistrial was declared, Burt said he escaped to the Grand Cayman Islands for a little scuba diving — and then it was right back to his job with the San Francisco public defender's office. "I thought I'd be gone for six to eight months (at the Menendez trial)," he says, "and it turned out to be a year and a half." As a consequence, he left the case after the mistrial, not wanting to jeopardize his job.

***"I can't put into words how painful the process is, because you're waiting for essentially a life-or-death decision.."***

brought to the case was a good working knowledge of death penalty litigation," Burt says. "I ended up handling all of the legal objections — anything having to do with the admissibility of evidence, motions to suppress certain evidence, legal arguments concerning whether the proceeding should be televised, or whether the jury should be questioned in a specific way during empanelling so as to minimize the effects of pre-trial publicity."

As well, he conducted cross-examinations of several witnesses, including the main prosecution witness, the psychologist who heard the brothers' confession. He and Lansing both made closing arguments on Lyle Menendez's behalf.

Their argument claimed "imperfect self-defense," a California standard that suggests the person "actually perceived the danger to be imminent,

he eventually had a change of heart about the clamoring hordes of reporters and cameramen who would descend each day on the Los Angeles court building.

"My own philosophy initially was to try as best I could to ignore them," he says. "But Leslie (Abramson) is very much a believer in the school of thought that you try your case as effectively in the press as in the courtroom."

"As it developed, I began to have some feeling for who were the people doing the real bad sensationalistic reporting and who were the people who had real questions about the process. Or if they weren't interested in the legal issues, they at least had some concept of presenting a balanced picture of the case.

"It's unlike any other place I've ever seen, in that, because L.A. is the media/entertainment center that it is,

As for the defendants, it appears they will be retried. No date has been set for the new trial.

The Menendez case inspired a host of commentaries on the evasion of personal responsibility — whether the legal system has swung too far toward allowing people to escape the consequences of their actions.

Burt says he's sympathetic toward that argument. But in abusive families, he says, the roots of criminal behavior are insidious.

"You cannot raise kids in a negative environment and expect much in the way of instilling good values in people," he says. "I feel very strongly about that personally. The more egregious cases I'm involved in do have their roots in child abuse.

"There really is no such thing as a senseless crime." ■

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